OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

In the Matter of: Case Nos. 14-CA-294830 et al.

STARBUCKS CORPORATION,

and

WORKERS UNITED.

Place: Oklahoma City, Oklahoma
Date: May 16, 2023
Pages: 1 through 31
Volume: 1 of 1

OFFICIAL REPORTERS

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

In the Matter of:	Cases 14-CA-294830
	14-CA-296504
STARBUCKS CORPORATION	14-CA-296656
	14-CA-297531
and	14-CA-299315
	14-CA-299819
WORKERS UNITED	14-CA-308427
	14-CA-311977

The above-titled matter came on for hearing pursuant to Notice, before the HONORABLE GEOFFREY CARTER, Administrative Law Judge, at the United States District Court, located at 200 NW 4th, Oklahoma City, Oklahoma, on Tuesday, the 16th day of May of 2023, at 1:36 p.m., Central Time.

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< No Witnesses>

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P R O C E E D I N G S

[Start: 1:36 p.m.]

THE HONORABLE GEOFFREY CARTER: The hearing will now come to order.

This is a hearing in the matter before the National Labor Relations Board. Administrative Law Judge Geoffrey presiding.

We are convening in the following cases: Starbucks Corporation and Workers United, Case Nos. 14-CA-294830, 296504, 296656, 297521, 299315, 299819, 3080427, and 311977.

Let's have the appearances of the parties, please, starting with the GC.

MS. COVEL: Yes, Julie Covel for the General Counsel.

MR. MYERS: Raymond Myers, IV, for the General Counsel.

JUDGE CARTER: Charging Party?

MR. QUINTO-POZOS: Manuel Quinto-Pozos for Charging Party.

JUDGE CARTER: Respondent?

MS. MEYER: Arissa Meyer for Respondent Starbucks Corporation.

MS. PLOOF: Amanda Ploff for Respondent Starbucks Corporation.

JUDGE CARTER: Welcome everybody.

Obviously off the record everyone is aware we spent most of the morning discussing different pathways for settlement possibilities, or obviously the alternative of litigating the case, and we have arrived at the point where formal settlement and non-Board settlement are not in the cards, so we are at the point where the Respondent has previously filed a motion for a Consent Order, or also referred to as a Consent Settlement Agreement, which they would sign off on and asking me to approve.

General Counsel and Charging Party would be opposing that agreement, and they also oppose the motion, so we will get to that in just a moment, but just a couple preliminary matters.

First, do you have Formal Papers?

MS. COVEL: Yes, Your Honor.

On May 15th of 2023, the parties were e-mailed copies of the Formal Papers which consist of GC Exhibit 1(a) through 1(hhh), which is the Index.

(General Counsel's Exhibit 1(a) through Exhibit 1(hhh), marked for identification.)

MS. COVEL: At this time, the Counsel for the General Counsel offers into evidence these Formal Papers.

JUDGE CARTER: Okay. Any objection to those?

MS. MEYER: Respondent has no objection.

MR. QUINTO-POZOS: No objection.

JUDGE CARTER: GC 1 is admitted without objection.

(General Counsel's Exhibit 1(a) through Exhibit 1(hhh), received into evidence.)

MS. COVEL: And Your Honor, at this time, we would also like to amend the Formal Papers to include the Opposition to Respondent's Motion for Consent Order Approving Proposed Settlement filed by Counsel for the General Counsel on May 15th of 2023, as well as the Opposition filed by the Charging Party, also filed on May 15th of 2023.

Those documents that I have hard copies of for the parties, are marked respectively as GC 1(iii) and GC 1(jjj).

(General Counsel's Exhibit 1(iii) and Exhibit 1(jjj), marked for identification.)

JUDGE CARTER: Okay, any objection to those being part of the Formal Papers?

MS. MEYER: No objection.

MR. QUINTO-POZOS: No objection.

JUDGE CARTER: Those additional items will be admitted.

(General Counsel's Exhibit 1(iii) and Exhibit 1(jjj),

received into evidence.)

[Loud talking from the hallway]

JUDGE CARTER: Now, Respondent, you have -- obviously you have filed a Motion for Consent Order, and you have e-mailed the, I guess, proposed order, if you will.

Has everyone received that by e-mail?

So what -- as I mentioned before, our reason for taking a recess before I issued an order, during that recess I will need to have someone sign on behalf of Respondent the Agreement so we at least have that in the record, and then if I approve, obviously, I will sign it, but just to have that last step completed.

But, for that purpose, Respondent, that can be marked as Respondent Exhibit 1, that being your order, your proposed order, once it has been signed by one of your representatives, for that purpose.

MS. MEYER: Sure.

JUDGE CARTER: And I understand there are objections to it, and we will get to that in just a minute.

So, as everyone is aware, the -- there is a Board standard that applies when considering whether to approve settlement agreements over the objection of one or more of the parties. That is *Independent Stave,* 287

NLRB 740, Page 743, and that lays forth a four factor test that I should consider when deciding whether to approve it or not approve the Settlement Agreement, and I will kind of just go over those briefly, and then I will hear from the parties about your positions on this.

The first factor is who has agreed to be bound by the agreement, and who is not in agreement to be bound. So, among the possible players in this is the General Counsel, Charging Party, any alleged discriminatees, and also obviously, Respondent.

Now, given it is your motion, Respondent, you have agreed to be bound; is that fair to say?

MS. MEYER: That is correct.

JUDGE CARTER: So -- and based on off the record discussions, my understanding is that General Counsel, alleged discriminatees, and Charging Party have not agreed to be bound by the proposed Consent Order. Is that accurate?

MS. COVEL: That is accurate for the General Counsel.

MR. QUINTO-POZOS: Yes, sir, for the remaining parties.

JUDGE CARTER: And I will give you a chance to address that in your remarks in just a minute, but I will just go through these different factors.

The second of which is -- is the settlement for proposed settlement reasonable in light of the allegations, a list of the litigation, and the state of the case.

Third, is there any fraud, coercion, or duress involved in the reaching of the settlement, proposed settlement.

And, fourth, has Respondent engaged in a history of violating the Act for breaching prior settlement agreements.

So, those -- those are the factors and I will consider -- obviously, I have written pleadings and arguments about that, but I will give you a chance to argue or state your positions briefly on -- on those factors. Give one statement, and break it down as you like, as you go through that.

And, so Respondent, since it is your motion, I will give you the first go.

MS. MEYER: Sure. Thank you, Your Honor.

So, Respondent has proposed a settlement, a Consent Settlement, that is intended to remedy all of the alleged violations of kind Board law. Respondent's proposed settlement furthers the Board's policy of peaceful, non-litigious resolution of dispute, and concerns resources and prompt relief to the Charging

Party, and it meets the four factors of *Independent Stave*, that Your Honor just went through.

Although the CGC and the Union oppose this settlement, this is just one factor, and not dispositive. The Board has long upheld the Consent Orders and turned over the objections of the other parties. Indeed that is the nature of the Consent Order is that there is at least one vote of the other parties are not going to agree to it.

More right, we think it is important to note that Counsel for the General Counsel and the Union's primary opposition to the proposed Consent Settlement is to non-remedial language terms.

In at least two other Starbucks cases, Administrative Law Judges have approved similar Consent Orders over the objections of the Union and Counsel for the General Counsel. Likewise in the *Bodega Latina Corporation* case, the Board upheld approval of a Consent Order containing non-admissions language and no default language over the objections of both the Union and the CGC.

The Board, or the Counsel for the General Counsel, has cited the *Texas Trans-Eastern* case which involves a non-Board settlement, and it was noted that, you know, the General Counsel's objection to this settlement was a

factor, a consideration, which, yes, it is a factor, but that was not the sole factor on which that settlement agreement was revoked. It was not based solely on the CGC's objection, but also because it did not provide for a notice posting and reinstatement or backpay for the alleged discriminatee involved, which are not issues that are in this case.

So, the most important factor under *Independent Stave* is obviously the reasonableness of the agreement. Respondent's proposed settlement is reasonable, in light of the violations alleged, the risk and cost of litigation, and the state of litigation.

We are currently looking at a two and a half-week trial, split into two different parts that requires travel for all of the parties involved, and you know, we still have to call numerous witnesses, and no witnesses have been called at this stage.

Several of the CGC's claims involve an attempt to change current Board law, so certainly there is no guarantee that she is going to be successful on all of her claims or, indeed any of her claims necessarily.

Moreover, if prior litigation involving the same parties is any indication, this case will be appealed and it could be a significant time before Charging Party receives any relief that may be awarded.

With respect to the non-admissions clause, there is ample precedent that this is not a valid reason for an objection to a settlement, as it otherwise effectuates the purposes of the Act. The fact that the current GC, that it is her position, you know, that non-admissions language should be used sparingly, that is merely an opinion and it is not binding of the wording.

Respondent is only asking for the standard classic non-admissions language that has been used, even in Board agreements, for a long time.

Likewise, as indicated by the multiple examples cited in our briefing, default language is not required for a settlement to be reasonable. Counsel for the General Counsel and the Union's objections to the absence of default language have largely been based on this argument that there -- that the Counsel for the General Counsel is without any enforcement mechanism. This argument has been previously rejected by the Board, who has noted that the Region can either issue a new complaint or revoke the settlement and pick up the case again.

Likewise, with the Consent Order, there is an ALJ order that is in place, and presumably this can be enforced through the same mechanisms as any other ALJ order.

Finally, I will briefly address the Region's extraordinary remedies that we have stricken from our proposal. These include additional posting requirements on top of the physical posting and the text message distribution that we have included.

First, there is no need for multiple forms of posting. Moreover, the methods proposed by the Region are inappropriate. The Partner Hub is an intranet -- a nationwide intranet that houses operation materials, generally applicable to all stores, as opposed to store-specific communications. Likewise the other "chat talk" forms that Counsel for the General Counsel has proposed, are non-company systems that are not used for official Starbucks communications, and indeed their Managers, the Store Managers, the District Managers involved in this case, are not participants in the store group used currently.

With respect to the in-person notice reading, this is an extraordinary remedy reserved for egregious violations, and it is not necessary where the Board's traditional remedies will suffice. It is also punitive and it violates Respondent's 8(c)(3) speech rights.

Additionally, in-person notice reading is only going to be effective in communicating to current employees who will already be seeing the poster and

receiving a text message under Respondent's proposal. The Board has also already proposed and identified the mandatory training which would be applicable to managers. Some of these managers are no longer employed in stores and in other roles. These campaigns have already been concluded, and the type of training is not specified in the CGC's proposal. Is it going to be training on the current law, or has the law been what the GC wants it to be.

We have also removed the language regarding the poster of an Explanation of Rights, Employee Rights, under the National Labor Relations Act. We do not believe this is appropriate for this case, or that it would be ordered if the Counsel for the General Counsel were successful at hearing.

[Loud talking from the hallway]

MS. MEYER: Lastly, the same goes for the request for Board Agent access visitation to check on our postings. Under, you know, a recent Board decision, *Noah's Ark*, this is only appropriate to be determined on a case-by-case basis, again for egregious and serious violations where there is a concern that -- that the Respondent is not going to be compliant with the notice postings, which there is no basis for that here.

Lastly, I believe we have resolved all of the

issues with the notice language through our discussions this morning, so that, I believe, should -- should take care of the Counsel for the General Counsel's objections to Respondent's proposal on those points.

You know, lastly, to the extent that Counsel for the General Counsel or the Union argues that either these changes or the fact that the captive audience allegations are not addressed, under the current standard which is *UPNC,* not *USPS,* the proposed Consent Order is not required to provide a full remedy, cut just again, a reasonable remedy, and so it is reasonable in this case to exclude allegations where the GC would actually have to change the law to be successful.

With respect to the third *Independent Stave* factor, there is no allegations or evidence of fraud, coercion, or distress in this case, so that certainly weighs in favor of entry of the Consent Order.

And then, finally, contrary to the Counsel for the General Counsel's and the Union's claims, Respondent has no history of violations or breaching prior settlement agreements. I know that the Union and the General Counsel are going to bring up, you know, the many charges and complaints that have been filed against Respondent, and these are just allegations. They have not been proven. Likewise, 10(j)'s, even to the extent

they have been granted, which not all of them have, which the Counsel for the General Counsel has sought, they only provide a term relief, and they are not decisions on the merit of the underlying allegations in those cases.

Prior ALJ decisions against Starbucks are currently no-appealed, so their final orders, many of these are also split decisions, so again, there is no guarantee that all of the allegations that the CGC would be successful on all allegations. The few Board decisions that are out there, one is a technical 8(a)(5) for a refusal to bargain, to test certifications. The other is -- involves conduct at a different store in a different stage, in a different region, predating the current campaign and litigation between the parties.

There are prior settlement agreements that Respondent has entered into. These contain non-admissions clauses, and therefore cannot be relied on as evidence of proclivity to violate the Act, and certainly I haven't heard any allegations that we have violated those settlement agreements.

In short, the first *Independent Stave* factor is inconclusive, and the final three support entering a consent order. This outcome effectuates the purposes of the Act by providing prompt and full relief to the

Charging Party without the necessity of a lengthy trial and additional litigation.

Thank you.

JUDGE CARTER: Uh-huh. General Counsel?

THE COURT REPORTER: Your Honor, before we start, can we shut that door? I am getting a lot of hallway noise.

JUDGE CARTER: Sure.

THE COURT REPORTER: Thank you.

JUDGE CARTER: Uh-huh.

[Brief pause to close door]

MS. COVEL: Your Honor, under *Independent Stave,* specifically Factor 1, both the Charging Party and the General Counsel, as previously noted, vigorously oppose a number of terms included in the Respondent's proposed settlement agreement, and those specific terms and the elimination of remedies proposed by the General Counsel make this proposed settlement unreasonable, and really provide additional weight for why our objections to this settlement agreement should be given a substantial amount of weight.

We believe that Factor 2 also weighs against approving the settlement. Several of Respondent's proposed changes make approval of this settlement eminently unreasonable. The inclusion of default

language encourages compliance and ensures that any breach of the settlement agreement can be promptly remedied.

First, the default language incentivizes Respondent's compliance, and second, in the event of potential default, Respondent is given an opportunity to cure its default before the Region expends resources reissuing the complaint, but most importantly, the request of language sought by the General Counsel ensures that in the event of a default, remedial relief is not delayed, and that the burden incurred by the default does not disproportionately fall on the non-offenders. If Respondent violates a settlement without default language, the burden of Respondent's breach falls squarely on the shoulders of the General Counsel, the Charging Party, and the witnesses, requiring of expenditure of additional resources, including time and money to reissue the complaint, and litigate a case after even more time has passed, while simultaneously proving that the breach occurred.

The settlement without default language, and with a non-admissions clause, does nothing to encourage compliance with the settlement. Moreover, Respondent's edits to the requested remedies reduce any immediate burden on Respondent. Respondent has struck a number of

remedies, including those requiring Respondent's managers to read the notice to its employees, post the Notice of Employee Rights under the National Labor Relations Act, and require its managers and supervisors to receive training about their obligations the Act.

In the instant case, these remedies are appropriate and necessary to remedy Respondent's unlawful actions, and to discourage similar conduct in the future.

First, contrary to Respondent's argument, the preference of its employees to receive information via text is irrelevant when determining if the notice reading is necessary to remedy the violations. A majority of these allegations occurred during in-person meetings scheduled and held by Respondent. Similar to current Board law that requires Respondents to post notices in the same way that they communicate with employees, including intranet, via e-mail, and other electronic forms, it stands to reason that Respondent should be required to communicate this remedy in the same manner in which it communicated the bulk of these violations...in person.

Second, requiring --

JUDGE CARTER: Wouldn't that be true in any case though?

MS. COVEL: Huh?

JUDGE CARTER: Wouldn't that be true in any case? I mean, most of the cases that you have are going to be someone says something at a meeting in person. So --

MS. COVEL: Well, I am not sure that I would agree that it happens in a meeting, but these --

JUDGE CARTER: But it is in person, so --

MS. COVEL: It -- I think -- you are correct. There are a lot of -- of allegations that occur in person, but I think in this particular instance, having a group -- like having a meeting where the notice is read when the Employer scheduled meetings where it then subsequently made statements that violates the Act makes -- I think is appropriate to allow these employees to be together to hear the allegations remedied, as opposed to seeing a notice or independently receiving a text message.

Requiring the Employer to post the Notice of Employee Rights under the Act, and train its managers and supervisors, is a necessary remedy for the Employer's repeated misrepresentation to employees, both before and after the union elections. Respondent's agents have repeatedly misled employees about Respondent's legal obligations under the Act, the obligations of the Union, and employee rights under the Act. If Respondent wants to characterize these

statements as isolated misstatements of law, the appropriate remedy is training and clarification about those rights and responsibilities, so that those misstatements do not happen again.

Finally, the fourth factor of *Independent Stave,* weighs against granting the Respondent's motion. The General Counsel simply respectfully disagrees that Respondent is not a recidivist. As noted in both oppositions, several Administrative Law Judge decisions have issued finding that the Respondent has violated the Act, and although these decisions are pending before the Board, those ALJ's did make findings of fact and draw conclusions of law, and any attempt to minimize Respondent's recidivist behavior requires adopting a belief that the Board will overrule every, or at least the vast majority, of findings made by the ALJ's. Otherwise, to simply conclude that the Respondent cannot be a recidivist until a Board order issues, means that Respondent has no incentive to change its unlawful weighs until such time occurs, and then the question really becomes how many Board orders does it take to establish recidivism. Ultimately, Respondent has demonstrated a proclivity to violate the law, and there is no more reason to believe that Respondent will abide by its proposed settlement agreement.

Based on these factors, we believe that approval of granting a Respondent's motion is inappropriate at this time.

JUDGE CARTER: Okay, Charging Party?

MR. QUINTO-POZOS: Thank you, Your Honor.

The Charging Party opposes the entry of a Consent Order on the Respondent's terms.

Under the *Independent Stave* factors, under the first factor, which is, of course, all of the parties' agreement, it is worth noting that the GC's opposition should be accorded particular weight under the *Texas Trans-Eastern* case, and it is also the Charging Party's position that its own opposition should also weigh heavily against entry of the Consent Order.

In the *Linn Television (phonetic)* Case No. Hirasawa, in concurrence, explained that it is inappropriate to force a settlement agreement on a party that did not consent to it, pointing out that the *Independent Stave* case, itself, the Board only approved a settlement as to the three Charging Parties who settled, and not to the fourth Charging Party who did not. That party's case proceeded to a hearing.

Under the second factor of the test, it is the Charging Party's position that the non-admission clause and the removal of the default provision is not

reasonable given the circumstances. The Respondent has made clear -- pardon me...

Under GC Memo 2107, addition of a non-admission language would be a significant departure from the direction that the GC has established. The Memo states that such language should be the exception and should only be considered under special circumstances, and the Charging Party argues that those are absent here. The Respondent has pointed out that the inclusion of this language would preclude future findings of their proclivity to violate the Act, therefore creating a vicious cycle.

In terms of the default language, the guidelines by the General Counsel is that those should be -- is that default language should be admitted only under very limited exceptions. Respectfully, it is the Charging Party's position that there is a big difference between the default language and the absence of such default language. In the case of a violation, the Region would have to start from square one in order to -- to vindicate this situation. That would put us right back where we are, but months down the road. Such a language would not result -- such a language and such an outcome would not result in the preservation of the Board's resources.

Aside from asking that these directives be ignored, the Respondent does not explain the reason why default language is unacceptable and why it is unreasonable or equivalent to what everybody else in the case wants.

In terms of cases in which other Administrative Law Judges have approved consent orders, both the General Counsel and the Charging Party have pointed out in their written oppositions that those cases involved a short list of minor violations. Both of those instances took place before there was the current history or recidivism, which I will address in a moment.

For example, in Case 16-CA-29615(a), that involved fewer and simpler violations at stores that were managed by different District Managers, did not include any 8(a)(5) violations, and in that case, there was no disagreement about specific remedies and notice language, all which create a distinction with this particular situation we are in today.

In terms of the reasonableness factor, other considerations are the risks that are inherent in litigation. It is the Charging Party's positions that the risks in this case are not inordinate. This is a fairly straightforward case, and aside from the General Counsel pursuing a change in the law on captive audience meetings, there are no novel theories to be tried. With

all due respect, entry of a consent order would not avoid delay, as the General Counsel and the Charging Party are likely to appeal entry of a consent order on the -- under the Respondent's proposed terms.

Finally, addressing the fourth *Independent Stave* factor, the Charging Party argues that the Respondent has built a record of recidivism. There are two Board cases already out there finding that the Respondent engaged in multiple 8(a)(1) and 8(a)(3) violations. There are thirteen ALJ decisions with findings against Respondent, multiple 10(j) proceedings have found that the General Counsel is likely to prevail in its theories against the Respondent, and there are dozens of complaints issued on 1,886 separate violations, including 97 employee discharges.

This is not yet a year's long history, but the test does not require that, and there is a history here.

It is also worth noting that several ALJ's have denied Respondent's similar motions, taking into account the disagreement by the General Counsel and the Charging Party, the unreasonableness of the terms, and the Respondent's recidivism history.

And finally, Your Honor, I would point out that in our written opposition, the Charging Party has endorsed your proposal of a formal settlement. Of course, we all

exhausted those efforts today, but in addition, the Charging Party proposes the inclusion of an admission clause, and I have included in the written opposition, and I have circulated to all of the parties language -- a proposed order that includes that language.

JUDGE CARTER: Okay, and as the last point, we can go ahead and mark that as Charging Party Exhibit 1, electronically, if you will.

MR. QUINTO-POZOS: That would be great.

(Charging Party's Exhibit 1, marked for identification.)

JUDGE CARTER: And that can be admitted into the record as your proposed settlement offer.

Any objection to its inclusion for that purpose?

MS. MEYER: No objection.

MS. COVEL: No objection.

JUDGE CARTER: Charging Party 1 will be admitted without objection.

(Charging Party's Exhibit 1, admitted into evidence.)

MR. QUINTO-POZOS: Thank you.

[Brief pause]

JUDGE CARTER: All right, so I appreciate your arguments, and also, again, I appreciate everyone's work this morning to discuss these different paths -- paths forward. Obviously, they didn't pan out as you might have hoped, you know, but everyone has their, you know,

requirements and obligations and other things, and so that leads us to the point of the Consent Order or litigating, as our remaining pathways.

So, in a moment, I will take a recess, and I will go ahead and we will adjourn, and then I will issue an order to rule on this -- on the motion.

While I -- during the recess, again as I mentioned, Respondent, if you would have someone execute the proposed Order that you submitted, and that can then be admitted into the record as Respondent Exhibit 1, and then I will issue my Order, and that will address our path forward, whether I will address our many trial dates, and those types of things in the Order.

(Respondent Exhibit 1, marked for identification.)

So, procedurally, I will go ahead and go into recess at this point in time, and then I will explain the next steps in my order in terms of what happens next, on my ruling, but we will recess -- we will recess the trial indefinitely, pending my ruling, and then the pending next steps whatever comes from there.

Anything from the parties at this point?

MS. MEYER: No, Your Honor.

MR. QUINTO-POZOS: No.

MS. COVEL: No, Your Honor.

JUDGE CARTER: Okay, thank you all -- thank you

again for your efforts, and let's go off the record, please.

(Whereupon, the hearing was placed in an indefinite recess at 2:16 p.m.)

CERTIFICATION

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), in the matter of STARBUCKS CORPORATION, and WORKERS UNITED, Case No. 14-CA-294830 et al, on Tuesday, the 16th of May, 2023, was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the recording, at the hearing, that the exhibits are complete and no exhibits received in evidence or in the rejected exhibit files are missing.

Sandra Hedges

Sandra Hedges, Official Reporter